

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DORA DAVIS,

Plaintiff,

V.

ALBANY INTERNATIONAL
CORPORATION, *et al.*,

Defendants.

CASE NO. 2:05-cv-1040-WKW

ORDER

Upon consideration of Defendant's Motion to Dismiss and Alternative Motion to Strike filed by Albany International Corporation (Doc. # 5), Plaintiff's Response thereto (Doc. # 11), Defendant Jeff Johnston's Motion to Strike (Doc. # 16), and Plaintiff's First Amended Complaint (Doc. # 33), the Court hereby ORDERS as follows:

1. The motion to dismiss (Doc. # 5) is DENIED as moot inasmuch as Plaintiff abandoned her claims for breach of contract, fraudulent inducement and bad faith when she filed Plaintiff's First Amended Complaint which omitted those claims. *See State Treasurer of State of Mich. v. Barry*, 168 F.3d 8, 19 n.9 (11th Cir. 1999) (noting that the "proper way to drop a *claim* without prejudice is to amend the complaint under [Federal Rule of Civil Procedure] 15(a)").
2. The motions to strike (Docs. # 5 & 16) are GRANTED to the extent that Plaintiff's jury demand is STRICKEN in relation to her ERISA claims. *See Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525, 1526-27 (11th Cir. 1990) (holding that participants suing under section 502(a)(1)(B) of ERISA are not entitled to a jury

trial).

DONE this 18th day of September, 2006.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE